

PAGE TWO *62946*  
 AMOUNT \$ 250  
 SUMMONS ISSUED  
 LOCAL RULE 4.1  
 WAIVER FORM  
 MCF ISSUED  
 BY DPTY. CLK. M  
 DATE 3-3-05

FILED  
 UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF MASSACHUSETTS

SANDRA FACTOR,

Plaintiff,

v.

WALT DISNEY WORLD COMPANY,

Defendant.

2005 CV - 3 P 2:19

UNITED STATES DISTRICT COURT  
 DISTRICT OF MASS.

CIVIL ACTION NO. 05 CV \_\_\_\_\_

**NOTICE OF REMOVAL**

MAGISTRATE JUDGE *Bowler*

Pursuant to 28 U.S.C. §§1441 et seq., defendant Walt Disney World Co. ("WDW") files this Notice of Removal and states as follows:

1. Defendant is a party in an action commenced against it by the plaintiff pending in the Superior Court Department of the Trial Court of the Commonwealth of Massachusetts for Middlesex County, Lowell Division, captioned Sandra Factor v. Walt Disney World Company, Civil Action No. 04-4509D (the "state action"). True copies of all process, pleadings and orders served on the defendant in the state action are attached hereto and incorporated herein as Exhibit A.
2. In her state action Complaint, plaintiff alleges that she is an individual residing at 346 Ferry Street, Malden, Massachusetts.
3. WDW is a corporation organized under the laws of the State of Florida with a principal place of business in Lake Buena Vista, Orange County, Florida.
4. There is, therefore, complete diversity of citizenship and plaintiff's Complaint demands judgment in the amount of \$150,000, exclusive of interest and costs.

5. WDW was served with a copy of the Summons and Complaint on February 2, 2005. Consequently, this notice is timely under 28 U.S.C. § 1446(b).
6. This action is one of which this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 and which may be, and hereby is, removed to this Court by the defendant.
7. This Notice of Removal is made expressly reserving all of WDW's defenses, including defenses relating to this Court's lack of personal jurisdiction over WDW.

WALT DISNEY WORLD CO.,

By its attorneys,



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Paul Bork, BBO #541815  
Jeffrey S. Follett, BBO #564337  
Foley Hoag LLP  
155 Seaport Blvd  
Boston, Massachusetts 02210  
(617) 832-1000

Dated: March 3, 2005

#### CERTIFICATE OF SERVICE

I hereby certify that on March 3, 2005, I caused a true copy of the foregoing Notice of Removal to be served upon Plaintiff by causing a copy of the same to be delivered by facsimile and U.S. Mail to her counsel of record, Richard P. Heartquist, 200 Sutton Street, #244, North Andover, MA 01845.



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Paul Bork

TO PLAINTIFF'S ATTORNEY: PLEASE CIRCLE TYPE OF ACTION INVOLVED: —  
TORT — MOTOR VEHICLE TORT — CONTRACT —  
EQUITABLE RELIEF — OTHER

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX..... ss  
[seal]

SUPERIOR COURT  
DEPARTMENT  
OF THE  
TRIAL COURT  
CIVIL ACTION

No.

04-4509 D

Sandra Factor..... Plaintiff(s)

v.

A TRUE COPY  
REVENUE OFFICE, CLERK'S  
WALT DISNEY WORLD, INC., FLORIDA

Walt Disney World Co Defendant(s)

Served at [REDACTED] on the 2<sup>nd</sup> day  
of Feb 2005  
by [REDACTED]  
Deputy Clerk

SUMMONS

To the above-named Defendant:

You are hereby summoned and required to serve upon Richard P. Heartquist.....  
plaintiff's attorney, whose address is 200 Sutton Street #244

North Andover, MA 01845....., an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also required to file your answer to the complaint in the office of the Clerk of this court at 40 Thorndike Street Cambridge, MA 02141..... either before service upon plaintiff's attorney or within a reasonable time thereafter.

Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's claim or you will thereafter be barred from making such claim in any other action.

Witness, Suzanne V. DeVecchio, Esquire, at Middlesex Superior Court  
the 24th..... day of January.....  
....., in the year of our Lord 2005.....

  
Edward J. Sullivan  
Clerk

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.
2. When more than one defendant is involved, the names of all such defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant.

**CIVIL ACTION  
COVER SHEET**

**Superior Court Department**  
County: Middlesex

PLAINTIFF(S) Sandra Factor		DEFENDANT(S) Walt Disney World, Co.
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE Richard P. Heartquist 200 Sutton Street, #244 North Andover, MA 01845 Board of Bar Overseers Number: BBO# 564451		-ATTORNEY (if known) unknown c/o Jeffrey H. Smith registered agent
Origin code and track designation		
Place an x in one box only:		<input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 &104 (After trial) (X)
<input checked="" type="checkbox"/> 1. F01 Original Complaint		<input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X)
<input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F)		<input type="checkbox"/> 6. E10 Summary Process Appeal (X)
<input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X)		
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)		
CODE NO.	TYPE OF ACTION (specify)	TRACK
B20	Personal Injury (F )	(X ) Yes ( ) No
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.		
TORT CLAIMS (Attach additional sheets as necessary)		
A. Documented medical expenses to date:		
1. Total hospital expenses .....	\$ 7,620.00	
2. Total Doctor expenses .....	\$ .....	
3. Total chiropractic expenses .....	\$ .....	
4. Total physical therapy expenses .....	\$ .....	
5. Total other expenses (describe) .....	\$ .....	
	Subtotal \$	\$ 5,000.00
B. Documented lost wages and compensation to date .....	\$ .....	
C. Documented property damages to date .....	\$ 20,000.00	
D. Reasonably anticipated future medical and hospital expenses .....	\$ .....	
E. Reasonably anticipated lost wages .....	\$ .....	
F. Other documented items of damages (describe)	\$ .....	
G. Brief description of plaintiff's injury, including nature and extent of injury (describe) Plaintiff injured her neck, back, shoulders and head when a bench collapsed under her at defendant's amusement park. After the bottom of metal bench collapsed, the high metal back struck Plaintiff.	\$ .....	
	TOTAL \$ 32,620.00	
CONTRACT CLAIMS (Attach additional sheets as necessary)		
Provide a detailed description of claim(s):		
		TOTAL \$ .....
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT		
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."		
Signature of Attorney of Record		DATE: 11/10/04

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT.

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

**Signature of Attorney of Record**

DATE: 11/10/04

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT DEPARTMENT  
LOWELL DIVISION  
DOCKET NO.

SANDRA FACTOR, )  
Plaintiff )  
 )  
V. ) COMPLAINT AND JURY DEMAND  
 )  
WALT DISNEY WORLD CO., )  
Defendant )

Introduction

Plaintiff brings this civil action against the Defendant seeking damages for injuries she suffered while visiting defendant amusement park in Florida. Plaintiff asserts the following claims: Negligence, Breach of Contract, and Negligent Infliction of Emotional Distress.

Parties

1. Sandra Factor, the "Plaintiff", is an individual residing at 346 Ferry Street, Malden, Middlesex County, Massachusetts.

2. Walt Disney World Co., the "Defendant", is upon information and belief, a Florida Corporation with a principle address listed with the Florida Department of State as 1375 Buena Vista Drive, 4<sup>th</sup> Floor North, Lake Buena Vista, Florida 32830 and with a registered agent at the same address named Jeffrey H. Smith.

Facts

3. On or about November 14, 2001 the plaintiff was a customer at the defendant's amusement park popularly known as "Walt Disney World" in Florida.

4. While legally in the park with her family, plaintiff stopped to rest on a metal, high-backed bench, designated for use by guests of the park such as the plaintiff, in a market area.

5. Moments after sitting on the bench, a support gave way causing plaintiff to fall with great force.

6. A moment after plaintiff fell, the metal back of the bench struck her as it fell; when she pushed that portion of the bench off of her, it swung around and struck her again.

7. Plaintiff was pregnant at the time and accompanied by only her toddler.

8. The defendant negligently and carelessly maintained its park allowing for a metal bench to collapse and injure the plaintiff.

9. The plaintiff suffered serious injuries to her neck, back, shoulders and skull.

10. The plaintiff has suffered from depression due to the injuries she suffered in the fall.

Count I  
(Negligence)

11. The plaintiff realleges and incorporates the allegations in paragraphs 1-10 above.

12. On November 14, 2001, plaintiff legally entered the defendant's premises while the defendant maintained its premises, in such a careless and negligent manner, in violation of its duty, as to cause great injury to the plaintiff.

13. As a direct and proximate result of the negligence of the defendant in maintaining said premises, plaintiff was caused to suffer severe personal injuries, was caused impairment of mind and body, was caused disability and was caused to incur and continues to incur medical expenses, and was caused to be unable to carry out her usual daily activities all to her great damage.

14. As a direct and proximate result of defendant's negligence, plaintiff has suffered \$150,000.00 in damages.

WHEREFORE, the Plaintiff demands judgment against the defendant in the amount of \$150,000.00, or any such amount or relief as this Honorable Court deems just and proper, together with interest and the costs of this action.

Count II  
(Breach of Contract)

15. The Plaintiff realleges and incorporates the allegations in paragraphs 1-14 above.

16. The plaintiff made an agreement whereby she would gain access to, and full enjoyment of, the defendant's amusement park.

17. Defendant implicitly agreed to provide safe and operable facilities.

18. By its breach of that contract plaintiff was caused to suffer severe personal injuries, was caused impairment of mind and body, was caused disability and was caused to incur and continues to incur medical expenses, and was caused to be unable to carry out her usual daily activities all to her great damage.

WHEREFORE, the Plaintiff demands judgment against the defendant in the amount of \$150,000.00, or any such amount or relief as this Honorable Court deems just and proper, together with interest and the costs of this action.

Count III  
(Negligent Infliction of Emotional Distress)

19. The Plaintiff realleges and incorporates the allegations in paragraphs 1-18 above.

20. Defendant was negligent in carrying out its duties in maintaining its amusement park.

21. That negligence on the part of Defendant led directly to plaintiff suffering severe emotional distress.

22. Plaintiff suffered physical harm manifested by objective symptomatology.

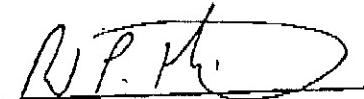
23. Any reasonable person in Plaintiff's position would have suffered emotional distress under the circumstances.

24. WHEREFORE, the Plaintiff demands judgment against the defendant in the amount of \$150,000.00, or any such amount or relief as this Honorable Court deems just and proper, together with interest and the costs of this action.

Jury Demand

Plaintiff respectfully demands a trial by jury as to all issues triable to a jury.

Sandra Factor,  
By her attorney,



Richard Heartquist  
200 Sutton Street, Suite 244  
North Andover, MA 01843  
(978) 687-6664  
BBO #564451

Dated: November 10, 2004

**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<b>I. (a) PLAINTIFFS</b> SANDRA FACTOR		<b>DEFENDANTS</b> WALT DISNEY WORLD COMPANY MAR - 3 P 2:18							
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>MIDDLESEX</u> (EXCEPT IN U.S. PLAINTIFF CASES)		COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____ (IN U.S. PLAINTIFF CASES ONLY)							
(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  Richard P. Heartquist 200 Sutton Street, #244 North Andover, MA 01845 978-687-6664		ATTORNEYS (IF KNOWN)  Paul Bork Jeffrey S. Follett Foley Hoag LLP 155 Seaport Boulevard, Boston, MA 02210-2600 617-832-1000							
<b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (place an "x" in One box for Plaintiff and One box for Defendant)							
<input type="checkbox"/> 1 U.S. GOVERNMENT Plaintiff <input type="checkbox"/> 2 U.S. GOVERNMENT Defendant		<input type="checkbox"/> 3 FEDERAL QUESTION (US Government Not a Party) <input checked="" type="checkbox"/> 4 DIVERSITY (Indicate Citizenship of Parties in Item III)							
		Citizen of This State <input checked="" type="checkbox"/> 1 <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> 4 Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input checked="" type="checkbox"/> 5 Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6						
<b>IV. NATURE OF SUIT</b> (Place an "X" in One BOX Only)									
<b>CONTRACT</b> <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability  <input type="checkbox"/> 196 Franchise		<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input checked="" type="checkbox"/> 360 Other Personal Injury		<b>FORFEITURE/PENALTY</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability		<b>BANKRUPTCY</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety <input type="checkbox"/> 670 Health <input type="checkbox"/> 690 Other		<b>OTHER STATUTES</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property		<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights		<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards act <input type="checkbox"/> 720 Labor/Mgmt. Relation <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act		<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395 ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 D/WC.DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
<b>V. ORIGIN</b> <input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court		(Place an "X" in One Box Only) <input type="checkbox"/> 3 Remanded from Appellate Court		<input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify) _____		<input type="checkbox"/> 6 Multidistrict Litigation		<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment	
<b>VI. CAUSE OF ACTION</b>		Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 USC § 1332.							
		Brief description of cause: Plaintiff's Complaint purports to assert claims for negligence, breach of contract, and negligent infliction of emotional distress.							
<b>VII. REQUESTED IN COMPLAINT</b>		<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		DEMAND \$ 150,000+ CHECK YES only if demanded in complaint:  JURY DEMAND: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO					
<b>VIII. RELATED CASE(S) (See Instructions): IF ANY</b>		JUDGE _____		DOCKET NUMBER _____					
DATE	Signature _____		SIGNATURE OF ATTORNEY OF RECORD _____						
FOR OFFICE USE ONLY	RECEIPT# _____		AMOUNT _____	APPLYING IPP _____	JUDGE _____	MAG JUDGE _____			

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTSFILED  
CLERK'S OFFICE

Sandra Factor v. Walt Disney World Company

100 MAR - 3 P 219

U.S. DISTRICT COURT  
DISTRICT OF MASS.

1. Title of case (name of first party on each side only) Sandra Factor v. Walt Disney World Company

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- II. 195, 196, 368, 400, 440, 441-446, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820\*, 830\*, 840\*, 850, 890, 892-894, 895, 950. \*Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- IV. 220, 422, 423, 430, 460, 480, 490, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- V. 150, 152, 153.

C5-10404-DJK

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES  NO 

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES  NO YES  NO 

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES  NO 

7. Do all of the parties in this action, excluding governmental agencies of the united states and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES  NO 

- A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division  Central Division  Western Division

- B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division  Central Division  Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES  NO 

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Paul BorkADDRESS Foley Hoag LLP, 155 Seaport Blvd, Boston, MA 02210TELEPHONE NO. (617) 832-1000